IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

A.O. No. 196 of 2001

Date of decision : 18-7-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :- 18-7-2006 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Appeal from Order No.196 of 2001
{Old No.755/1982}

Union of India
Through the Secretary to Govt. of India
Ministry of Defence
New Delhi .....Appellant

Versus

1. Sri Avadh Ram @ Yad Ram S/o Shri Nain Singh
2. Km. Urmila D/o Sri Avadh Ram
3. Km. Raj Kumari D/o Sri Avadh Ram
   All R/o village Nathanpur
   P.O. Nehru Gram
   District Dehradun .....Respondents

Sri Arvind Vashisht learned Asstt. Advocate General for the Appellant.

Hon'ble J. C. S. Rawat, J.

1. This appeal has been filed against the judgment and award dated 13.08.1982 passed the Addl. District Judge/Motor Accidents Claims Tribunal (hereinafter referred as 'Tribunal'), Dehradun in M.A.C.P. No.37/1978, whereby the learned Tribunal had awarded a sum of Rs.20,000/- as compensation alongwith interest @ 6% per annum on the amount due from the date of award.

2. Brief facts of the case are that the claimant-respondent No.1 had filed a claim petition alleging therein that on 12.10.1977 Smt. Jhokhan Devi w/o Sri Awadh Ram was travelling as a pillion rider on the cycle, which was being driven by her husband Awadh Ram(claimant). It was further alleged that they were going on the cycle from Power House to Majra and the deceased-Smt. Jokhan Devi was sitting on the carrier of the cycle. A military lorry No.ZD 60802 driven by Lakhi Ram came from behind and hit the cycle. Due to

which Smt. Jhokhan Devi sustained grievous injuries as a result of rash and negligent driving of the driver of lorry. It has also been alleged that the deceased was aged about 30 years and was earning Rs.175/- per month at the time of incident. In this way, an amount of Rs.30,000/- had been claimed as compensation.

3. The parties filed their written statements and contested the case. The Union of India-appellant has denied all the allegations made in the claim petition. He had stated in his written statement that the vehicle (lorry) was not being driven rashly and negligently by its driver. It was further stated that on 12.10.1977 the offending vehicle was carrying children from the school. After crossing the school gate of Hiltons, the vehicle picked up speed. The driver of the vehicle saw a woman sitting on the carrier of a cycle driven by Awadh Ram going towards Dehradun and all of a sudden the woman jumped off the cycle and fell on the road to commit suicide. Her head hit the left front mudguard of the vehicle. The driver applied the brakes but the vehicle passed over the lower part of her body. The driver stopped the vehicle and saw that the woman was alive and bleeding. He stopped a jeep and requested the driver to take her to the hospital. The claimant Awadh Ram did not permit her to be taken saying that she herself wanted to die and that in the morning she had gone to commit suicide by jumping into the well. It was further prayed that he was not liable to play the compensation.

4. The Tribunal framed necessary issues in the case and ultimately, the learned Tribunal had awarded a sum of Rs.20,000/- as compensation alongwith interest @

6% per annum in favour of the claimant against the appellant-Union of India.

5. Feeling aggrieved by this, the Union of India has preferred the present appeal.

6. It was contended on behalf of the appellant that the claimant had not proved its case, whereas the appellant-Union of India had sufficiently proved that the deceased died on account of jumping from the cycle to commit the suicide. There is no dispute that the deceased was run over by the appellant's lorry (bus) on 12.10.1977 at about 9a.m. at the place of occurrence. It is not disputed that the claimant and his wife were going on the cycle on the date of incident at the relevant time and the deceased was sitting on the carrier of the cycle. The only dispute remains to be decided as to whether the deceased died due to rash and negligent driving of the offending vehicle or the deceased herself jumped from the cycle to commit suicide. PW1-Awadh Ram had supported the version of the claim petition and had given the evidence in support of its case. Perusal of the evidence of PW1-Awadh Ram reveals that his evidence is clear and consistent. Nothing could be elicited from his cross examination that the driver of the offending vehicle was not rash and negligent while driving the vehicle. PW1-Awadh Ram had denied that the deceased jumped from the cycle to commit the suicide. PW1 Awadh Ram has further stated that he did not state him that the deceased jumped into the well in the morning on the date of incident. The evidence of DW1 Ranjit Singh Tomar was also adduced by the appellant. DW1-Ranjit Singh Tomar had stated that when he was going to Mazra and was resting near a

pole. He saw the offending school bus stopping near the Hilton school. When it re-started the woman sitting on the carrier of a cycle jumped before the lorry. DW1 Ranjit Singh Tomar had also denied that the driver of the offending vehicle was rash and negligent at the time of accident. DW2-Lakhi Ram, who was the driver of the lorry (bus), had stated in his evidence that he stopped the vehicle at Hilton school and took some children from that place. He started the vehicle again and had gone a small distance when she saw a cyclist going. A woman was sitting on the carrier of cycle. She jumped from the carrier and was run over by the vehicle. On perusal of the record reveals that the evidence of the appellant is not credible and cogent. It is in the evidence that the deceased while riding the cycle was facing towards the left side and the cycle was being driven on the extreme left of the road. If she has jumped from the cycle she would have jumped on the left side and she could not have been run over by the offending vehicle. After the incident the foot of the deceased was lying towards the road and the head towards the ‘katha’ path. Had she jumped before the offending vehicle she could have fallen with her head towards the road and not her feet towards the road. It is well settled position that the witness can tell a lie but the circumstances never tell a lie. It is also in the evidence of appellant that the deceased was run over by the rear wheel of the vehicle and as such he could not see that she was run over by the vehicle. Whereas the appellant has taken a plea in the written statement that he saw a woman sitting on a carrier of the cycle and she was going towards Dehradun. She jumped from the cycle and fell on the road to commit the suicide and her head hit the left front mudguard of the vehicle. As such, the plea taken

is in variance with the evidence. This further leads to take an inference that the evidence of the appellant adduced before the trial court was not credible and cogent. It is not in the evidence that the driver of the lorry blew the horn. It is also in the evidence that the offending vehicle hit the cycle from behind. There is no sufficient evidence to prove that she tried to commit the suicide by jumping before the lorry. Thus, the evidence of the appellant could not be held to be a reliable and cogent.

7. In view of the foregoing discussion, the Tribunal was rightly justified in holding that the claimant had sufficiently proved the rash and negligent of the appellant's vehicle and due to which the accident took place. There is an unrebutted statement of PW1 that the deceased was earning Rs.175/- per month. It is also in the evidence that she was a house-wife and her age was 30 years at the time of accident. The Tribunal was justified in awarding the amount of compensation to the claimant.

8. In view of the above discussion, I am completely in agreement with the findings recorded by the Tribunal. The appeal lacks merit and liable to be dismissed.

(J.C.S. Rawat, J.)

Dated 18.07.2006

LSR

A.O. NO.196/01 (755/82)

Hon'ble J.C.S. Rawat, J.

Heard agreements.

The appeal is dismissed order passed on Separate sheet.

Dt. 18.7.2006